

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. Nos.285 & 286 of 2017

COMMON ORDER:

The plaintiff is the revision petitioner in both the present Civil Revision Petitions. In the suit O.S.No.32 of 2010 on the file of the Senior Civil Judge, Repalle of Guntur District, filed for partition of the plaint schedule properties by the sole plaintiff against two defendants, defendant No.1 remained *ex parte* and defendant No.2 is the only contesting, particularly based on the so-called Will, said to have been executed by their mother on 15.06.1990 and subsequently she died testate and thereby, the contest of defendant No.2 is that the plaintiff is not entitled to partition, asked for partition as if their mother died intestate in view of bequeath in the Will claimed by him. Pursuant to the contest, in the course of trial, the evidence of both sides completed and the matter is at the stage of arguments, if not within the later stage, if at all from the rival submissions reserved for judgment. During trial, the plaintiff, in view of the dispute as to the so-called genuineness of the Will, set up by his brother defendant No.2, sought for sending of Ex.B1-Will, said to have been marked, to the Handwriting Expert for comparison of the signature in the said Will-Ex.B1 with the Sale Deed, said to have been executed by the mother of plaintiff and defendant

No.2 on 15.06.1990 in favour of P.Koteswara Rao, S/o. Venkateswarlu. Earlier an application in I.A. No.450 of 2015 was filed by the plaintiff to issue summons to the Sub-Registrar, Cherukupalli to produce the Left Thumb Impression Register of T.Agravani, the executant of the said Sale Deed supra from her signature and thumb expressions since available in the Register with the S.R.O. and the said application was ended in dismissal. Aggrieved of the same, the plaintiff preferred C.R.P.No.No.3205 of 2015 before the High Court and the same was allowed. While the said Civil Revision Petition was pending, I.A.Nos.702 and 703 of 2015 were filed by the plaintiff to summon defendant No.1 as a Court witness and those applications were allowed on 02.01.2015. I.A.No.3 of 2016 is filed by the plaintiff to send Ex.B1 to the Handwriting Expert for comparison and opinion saying the signature in Left Thumb Expression Register of the Sub-Registrar, Cherukupalli available to be compared with the signature of the executant of Ex.B1-Will, if genuine or not with that to the Handwriting Expert. The Civil Revision Petition no doubt allowed on 11.09.2015 to call for the said Register. I.A. No.3 of 2016 since allowed by referring the questioned document and the admitted signature available in the Thumb Impression Register of Sub-Registrar Office, Cherukupalli to the Handwriting Expert, the Expert, on

27.10.2016, addressed a letter to the Senior Civil Judge, Repalle, saying the signature of executant in the Thumb Expression Register relating to the Sub-Registrar, Cherukupalli, dated 11.06.1990, referred as Ex.X2 marked during the evidence of PW2 on 30.11.2015, is muddled and unable to compare with the same the disputed signature on Ex.B1-Will. The lower Court closed I.A.No.3 of 2016 in view of the Expert opinion and because of original of Ex.B14 not available including with the so-called vendee when sought for. Subsequently, I.A.No.534 of 2016 was filed by the self-same plaintiff to send the said signature covered by the disputed Will-Ex.B1 to the Handwriting Expert with the original of Ex.B14, dated 11.06.1990, since available with the so-called vendee from the mother of plaintiff and defendant No.2. The said petition is opposed by the counter of defendant No.2 stating after closure of I.A.No.3 of 2016, pursuant to the original not available, the plaintiff cannot re-agitate the issue ignoring the earlier round of litigation covered by the judicial order that became final and it operates as *resjudicata* and the document now sought to be filed on 15.11.1996, as if original, is the colour Xerox camouflaged came to claim as if genuine original document. In pursuant to which, the learned Senior Civil Judge, Repalle, passed the impugned order, dated 30.12.2016, dismissing the re-open application and also

dismissing the application to send Ex.B1-Will, the so-called original document, along with contemporaneous Sale Deed to the Expert for comparison and opinion. The impugned common order of the lower Court covered by the two Civil Revision Petitions therefrom reads that the matter is at the stage of arguments and the disputed document-Ex.B1 was already sent to the Handwriting Expert and it was returned with an objection that the admitted signature is not sufficient and suitable for comparison (Thumb Expression Register signature) [Ex.X2-Supra] and the Expert stated that more than one admitted signatures in a clear manner are required, and without explaining the reasons for possession of the document and its genuineness as to how all of a sudden available when original of the Sale Deed, dated 11.06.1990, not available, it cannot be considered. It is also observed that in the Sale Deed there is no photograph of the executant. The Expert already stated that one signature is not sufficient and it requires some more admitted signatures for comparison. It is not the case of calling for the original in the custody of somebody, if any, but the petitioner-plaintiff directly produced the genuineness of which is in dispute by defendant No.2. As such, the question of re-opening the matter does not arise much less to resend the document to the Expert for comparison and opinion at this stage. The same is impugned

in the grounds of present Civil Revision Petitions that as the very order is unsustainable and baseless and not properly understanding the facts and adverting to the issue involved, the same is supported by the learned counsel for the respondent-defendant No.2.

2. Heard both sides and perused the material on record.

3. So far as the revision in relation to the sending of disputed signature on the Will-Ex.B1 with original of the so-called Sale Deed-Ex.B14, genuineness of which is in dispute by defendant No.2, is concerned, as observed in the earlier revision order of this Court in C.R.P.No.3205 of 2015, dated 11.09.2015, it is one of the important modes to disprove the so-called Will-Ex.B1 by the plaintiff in support of his claim. No doubt, the Will will not be proved including by admission, but for compliance with the requirements of Section 63 of the Indian Evidence Act. It is the person, who relies on the Will, to prove the genuineness of the Will and it is the last Will and testament executed by the testator in a sound and disposing state of mind, without which it will not be a bequeath much less to come into operation of the bequeath that too when the Will speaks from the grave of the deceased, leave about the intention of the executant is the pole test. The proof of Will by defendant No.2 is one thing and the very signature in dispute by the plaintiff on Ex.B1-Will is another thing. Even

the plaintiff could not prove the very signature on the Will is not genuine, leave about the difference in the so-called pattern of writing and the letters, particularly ॐ or ॐ concerned, allegedly to a naked eye apparent on the so-called forged signature of the executant; that will not enhance the case of defendant No.2 much less to lessen the burden of proving the Will contemplated by law to rely on by defendant No.2 much less to non-suit the plaintiff. However, the fact remains all of a sudden for the plaintiff to say that the original of Ex.B14 available concerned, earlier the vendee of the said Sale Deed, dated 11.06.1996, stated not available of the original and it is not even produced by him at least for summoning to produce, if at all subsequently stated available; but, directly produced by the plaintiff all of a sudden without even saying how, when and where he obtained the original Sale Deed, dated 11.06.1996, from the so-called vendee of the mother of plaintiff and defendant No.2, that too when the contest by defendant No.2 it is not real and not original, it requires the foundation for the trial Court, if at all to send the same for comparison of the signature therein also with reference to the Thumb Expression Register, from which the Expert could not able to compare the signature on Ex.B1, as an assistance with that reference also and thereby without the foundation and that too at the

stage of arguments of the suit coming since long time, the plaintiff cannot seek reopen. The plaintiff did not even choose to mention any person to prove the document much less the vendee to say that it is the original, despite under the contest of defendant No.2 of not original and only a colour Xerox. In the absence of proof that it is original, that properly in his custody and he handover the same to the plaintiff, no doubt the plaintiff cannot ask to take the same as an aid for sending to the Expert; though the earlier order including of closure of I.A.No.3 of 2016 no way *resjudicata* from the settled expressions of the Apex Court that the order in interlocutory application will not operate as *resjudicata* unless there must be remedy of appeal and without availing the same made final and otherwise not.

4. Having regard to the above, with the observations unless that foundation is there, to be allowed for sake of asking, there is nothing to interfere with the order of lower Court.

Accordingly, these Civil Revision Petitions are disposed of and for thereby nothing to reopen for that purpose. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

04.01.2018
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